

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

No. 834

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### Introduced by Assembly Member Salas

February 26, 2015

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An act to ~~amend Section 82015 of~~ add Section 89002 to the Government Code, relating to the Political Reform Act of 1974.

#### LEGISLATIVE COUNSEL’S DIGEST

AB 834, as amended, Salas. Political Reform Act of 1974: ~~contributions~~ advertisements.

*Existing law, the Political Reform Act of 1974, provides for the comprehensive regulation of campaign conduct, including requiring certain disclosures in advertisements made for campaign purposes. Existing law also prohibits an incumbent from sending a newsletter or other mass mailing at public expense.*

*This bill would define a “public advertisement” as an advertisement that is paid for from the funds of a state or local public entity. This bill would prohibit a person or entity from disseminating, broadcasting, or otherwise publishing a public advertisement, as defined, within 90 days of an election if the advertisement features, as defined, a candidate who will appear on the ballot at that election.*

*Existing law makes a willful violation of the Political Reform Act of 1974 a misdemeanor and subject offenders to criminal penalties.*

*The bill would impose a state-mandated local program by creating additional crimes.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.*

*Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

*The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes upon a  $\frac{2}{3}$  vote of each house and compliance with specified procedural requirements.*

*This bill would declare that it furthers the purposes of the act.*

~~Existing law, the Political Reform Act of 1974, provides for the comprehensive regulation of campaign financing, including requiring the reporting of campaign contributions and expenditures and imposing other reporting and recordkeeping requirements on campaign committees. The act provides that a payment made at the behest of a candidate is a contribution to that candidate, unless full and adequate consideration is received from the candidate or it is clear from the surrounding circumstances that the payment was made for purposes unrelated to his or her candidacy for elective office.~~

~~This bill would make a nonsubstantive change to that payment provision.~~

~~Vote: majority  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: no-yes. State-mandated local program: no-yes.~~

*The people of the State of California do enact as follows:*

- 1     *SECTION 1. Section 89002 is added to the Government Code,*
- 2     *to read:*
- 3     *89002. (a) For purposes of this section, the following terms*
- 4     *have the following meanings:*
- 5         *(1) "Public advertisement" means an advertisement, including*
- 6         *a broadcast, billboard, or newspaper advertisement, that is paid*
- 7         *for from the funds of a state or local public entity.*
- 8         *(2) "Featuring a candidate" means containing the voice or*
- 9         *image of, or a statement attributable to, a candidate.*
- 10         *(b) A person or entity shall not disseminate, broadcast, or*
- 11         *otherwise publish a public advertisement featuring a candidate*
- 12         *for elective office within 90 days before the date of the election at*
- 13         *which the candidate will appear on the ballot.*
- 14     *SEC. 2. No reimbursement is required by this act pursuant to*
- 15     *Section 6 of Article XIII B of the California Constitution because*

1 *the only costs that may be incurred by a local agency or school*  
2 *district will be incurred because this act creates a new crime or*  
3 *infraction, eliminates a crime or infraction, or changes the penalty*  
4 *for a crime or infraction, within the meaning of Section 17556 of*  
5 *the Government Code, or changes the definition of a crime within*  
6 *the meaning of Section 6 of Article XIII B of the California*  
7 *Constitution.*

8 *SEC. 3. The Legislature finds and declares that this bill furthers*  
9 *the purposes of the Political Reform Act of 1974 within the meaning*  
10 *of subdivision (a) of Section 81012 of the Government Code.*

11 ~~SECTION 1. Section 82015 of the Government Code is~~  
12 ~~amended to read:~~

13 ~~82015. (a) "Contribution" means a payment, a forgiveness of~~  
14 ~~a loan, a payment of a loan by a third party, or an enforceable~~  
15 ~~promise to make a payment except to the extent that full and~~  
16 ~~adequate consideration is received, unless it is clear from the~~  
17 ~~surrounding circumstances that it is not made for political purposes.~~

18 ~~(b) (1) A payment made at the behest of a committee, as defined~~  
19 ~~in subdivision (a) of Section 82013, is a contribution to the~~  
20 ~~committee unless full and adequate consideration is received from~~  
21 ~~the committee for making the payment.~~

22 ~~(2) A payment made at the behest of a candidate is a contribution~~  
23 ~~to that candidate, unless the criteria in either subparagraph (A) or~~  
24 ~~(B) are satisfied:~~

25 ~~(A) Full and adequate consideration is received from the~~  
26 ~~candidate.~~

27 ~~(B) It is clear from the surrounding circumstances that the~~  
28 ~~payment was made for purposes unrelated to his or her candidacy~~  
29 ~~for elective office. The following types of payments are presumed~~  
30 ~~to be for purposes unrelated to a candidate's candidacy for elective~~  
31 ~~office:~~

32 ~~(i) A payment made principally for personal purposes, in which~~  
33 ~~case it may be considered a gift under the provisions of Section~~  
34 ~~82028. Payments that are otherwise subject to the limits of Section~~  
35 ~~86203 are presumed to be principally for personal purposes.~~

36 ~~(ii) A payment made by a state, local, or federal governmental~~  
37 ~~agency or by a nonprofit organization that is exempt from taxation~~  
38 ~~under Section 501(c)(3) of the Internal Revenue Code.~~

39 ~~(iii) A payment not covered by clause (i), made principally for~~  
40 ~~legislative, governmental, or charitable purposes, in which case it~~

1 is neither a gift nor a contribution. However, payments of this type  
2 that are made at the behest of a candidate who is an elected officer  
3 shall be reported within 30 days following the date on which the  
4 payment or payments equal or exceed five thousand dollars  
5 (\$5,000) in the aggregate from the same source in the same  
6 calendar year in which they are made. The report shall be filed by  
7 the elected officer with the elected officer's agency and shall be  
8 a public record subject to inspection and copying pursuant to  
9 subdivision (a) of Section 81008. The report shall contain the  
10 following information: name of payor, address of payor, amount  
11 of the payment, date or dates the payment or payments were made,  
12 the name and address of the payee, a brief description of the goods  
13 or services provided or purchased, if any, and a description of the  
14 specific purpose or event for which the payment or payments were  
15 made. Once the five-thousand-dollar (\$5,000) aggregate threshold  
16 from a single source has been reached for a calendar year, all  
17 payments for the calendar year made by that source shall be  
18 disclosed within 30 days after the date the threshold was reached  
19 or the payment was made, whichever occurs later. Within 30 days  
20 after receipt of the report, state agencies shall forward a copy of  
21 these reports to the Commission, and local agencies shall forward  
22 a copy of these reports to the officer with whom elected officers  
23 of that agency file their campaign statements.

24 (C) For purposes of subparagraph (B), a payment is made for  
25 purposes related to a candidate's candidacy for elective office if  
26 all or a portion of the payment is used for election-related activities.  
27 For purposes of this subparagraph, "election-related activities"  
28 shall include, but are not limited to, the following:

29 (i) Communications that contain express advocacy of the  
30 nomination or election of the candidate or the defeat of his or her  
31 opponent.

32 (ii) Communications that contain reference to the candidate's  
33 candidacy for elective office, the candidate's election campaign,  
34 or the candidate's or his or her opponent's qualifications for  
35 elective office.

36 (iii) Solicitation of contributions to the candidate or to third  
37 persons for use in support of the candidate or in opposition to his  
38 or her opponent.

1     ~~(iv) Arranging, coordinating, developing, writing, distributing,~~  
2     ~~preparing, or planning of any communication or activity described~~  
3     ~~in clause (i), (ii), or (iii).~~

4     ~~(v) Recruiting or coordinating campaign activities of campaign~~  
5     ~~volunteers on behalf of the candidate.~~

6     ~~(vi) Preparing campaign budgets.~~

7     ~~(vii) Preparing campaign finance disclosure statements.~~

8     ~~(viii) Communications directed to voters or potential voters as~~  
9     ~~part of activities encouraging or assisting persons to vote if the~~  
10    ~~communication contains express advocacy of the nomination or~~  
11    ~~election of the candidate or the defeat of his or her opponent.~~

12    ~~(D) A contribution made at the behest of a candidate for a~~  
13    ~~different candidate or to a committee not controlled by the~~  
14    ~~behesting candidate is not a contribution to the behesting candidate.~~

15    ~~(3) A payment made at the behest of a member of the Public~~  
16    ~~Utilities Commission, made principally for legislative,~~  
17    ~~governmental, or charitable purposes, is not a contribution.~~  
18    ~~However, payments of this type shall be reported within 30 days~~  
19    ~~following the date on which the payment or payments equal or~~  
20    ~~exceed five thousand dollars (\$5,000) in the aggregate from the~~  
21    ~~same source in the same calendar year in which they are made.~~  
22    ~~The report shall be filed by the member with the Public Utilities~~  
23    ~~Commission and shall be a public record subject to inspection and~~  
24    ~~copying pursuant to subdivision (a) of Section 81008. The report~~  
25    ~~shall contain the following information: name of payor, address~~  
26    ~~of payor, amount of the payment, date or dates the payment or~~  
27    ~~payments were made, the name and address of the payee, a brief~~  
28    ~~description of the goods or services provided or purchased, if any,~~  
29    ~~and a description of the specific purpose or event for which the~~  
30    ~~payment or payments were made. Once the five-thousand-dollar~~  
31    ~~(\$5,000) aggregate threshold from a single source has been reached~~  
32    ~~for a calendar year, all payments for the calendar year made by~~  
33    ~~that source shall be disclosed within 30 days after the date the~~  
34    ~~threshold was reached or the payment was made, whichever occurs~~  
35    ~~later. Within 30 days after receipt of the report, the Public Utilities~~  
36    ~~Commission shall forward a copy of these reports to the Fair~~  
37    ~~Political Practices Commission.~~

38    ~~(e) "Contribution" includes the purchase of tickets for events~~  
39    ~~such as dinners, luncheons, rallies, and similar fundraising events;~~  
40    ~~the candidate's own money or property used on behalf of his or~~

1 her candidacy, other than personal funds of the candidate used to  
2 pay either a filing fee for a declaration of candidacy or a candidate  
3 statement prepared pursuant to Section 13307 of the Elections  
4 Code; the granting of discounts or rebates not extended to the  
5 public generally or the granting of discounts or rebates by television  
6 and radio stations and newspapers not extended on an equal basis  
7 to all candidates for the same office; the payment of compensation  
8 by any person for the personal services or expenses of any other  
9 person if the services are rendered or expenses incurred on behalf  
10 of a candidate or committee without payment of full and adequate  
11 consideration.

12 (d) “Contribution” further includes any transfer of anything of  
13 value received by a committee from another committee, unless  
14 full and adequate consideration is received.

15 (e) “Contribution” does not include amounts received pursuant  
16 to an enforceable promise to the extent those amounts have been  
17 previously reported as a contribution. However, the fact that those  
18 amounts have been received shall be indicated in the appropriate  
19 campaign statement.

20 (f) (1) Except as provided in paragraph (2) or (3), “contribution”  
21 does not include a payment made by an occupant of a home or  
22 office for costs related to any meeting or fundraising event held  
23 in the occupant’s home or office if the costs for the meeting or  
24 fundraising event are five hundred dollars (\$500) or less.

25 (2) “Contribution” includes a payment made by a lobbyist or a  
26 cohabitant of a lobbyist for costs related to a fundraising event  
27 held at the home of the lobbyist, including the value of the use of  
28 the home as a fundraising event venue. A payment described in  
29 this paragraph shall be attributable to the lobbyist for purposes of  
30 Section 85702.

31 (3) “Contribution” includes a payment made by a lobbying firm  
32 for costs related to a fundraising event held at the office of the  
33 lobbying firm, including the value of the use of the office as a  
34 fundraising event venue.

35 (g) Notwithstanding the foregoing definition of “contribution,”  
36 the term does not include volunteer personal services or payments  
37 made by any individual for his or her own travel expenses if the  
38 payments are made voluntarily without any understanding or  
39 agreement that they shall be, directly or indirectly, repaid to him  
40 or her.

1     ~~(h) “Contribution” further includes the payment of public~~  
2     ~~moneys by a state or local governmental agency for a~~  
3     ~~communication to the public that satisfies both of the following:~~

4     ~~(1) The communication expressly advocates the election or~~  
5     ~~defeat of a clearly identified candidate or the qualification, passage,~~  
6     ~~or defeat of a clearly identified measure, or, taken as a whole and~~  
7     ~~in context, unambiguously urges a particular result in an election.~~

8     ~~(2) The communication is made at the behest of the affected~~  
9     ~~candidate or committee.~~

10    ~~(i) “Contribution” further includes a payment made by a person~~  
11    ~~to a multipurpose organization as defined and described in Section~~  
12    ~~84222.~~